

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JEREMY BLUE,

Plaintiff,

v.

DANIEL BEDWELL,

Defendant.

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No. 2:21-cv-00315-JRS-MKK

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

Plaintiff Jeremy Blue, a prisoner at Wabash Valley Correctional Facility (Wabash Valley), sued Aramark Food Service Director Daniel Bedwell for allegedly providing him with inadequate food portions, in violation of the Eighth Amendment. Mr. Blue and Mr. Bedwell have moved for summary judgment. Dkt. [46]; dkt. [58].

For the reasons stated below, both motions are **DENIED**.

**I.
Standard of Review**

Parties in a civil dispute may move for summary judgment, which is a way of resolving a case short of a trial. *See* Fed. R. Civ. P. 56(a). Summary judgment is appropriate when there is no genuine dispute as to any of the material facts, and the moving party is entitled to judgment as a matter of law. *Id.*; *Pack v. Middlebury Comm. Sch.*, 990 F.3d 1013, 1017 (7th Cir. 2021). A "genuine dispute" exists when a reasonable factfinder could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "Material facts" are those that might affect the outcome of the suit. *Id.*

When reviewing a motion for summary judgment, the Court views the record and draws all reasonable inferences from it in the light most favorable to the nonmoving party. *Khungar v. Access Cmty. Health Network*, 985 F.3d 565, 572-73 (7th Cir. 2021). It cannot weigh evidence or make credibility determinations on summary judgment because those tasks are left to the factfinder. *Miller v. Gonzalez*, 761 F.3d 822, 827 (7th Cir. 2014). The Court is only required to consider the materials cited by the parties, *see* Fed. R. Civ. P. 56(c)(3); it is not required to "scour every inch of the record" for evidence that is potentially relevant. *Grant v. Tr. of Ind. Univ.*, 870 F.3d 562, 573-74 (7th Cir. 2017).

"[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[T]he burden on the moving party may be discharged by 'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325.

When reviewing cross-motions for summary judgment, all reasonable inferences are drawn in favor of the party against whom the motion at issue was made. *Valenti v. Lawson*, 889 F.3d 427, 429 (7th Cir. 2018) (citing *Tripp v. Scholz*, 872 F.3d 857, 862 (7th Cir. 2017)). The existence of cross-motions for summary judgment does not imply that there are no genuine issues of material fact. *R.J. Corman Derailment Servs., LLC v. Int'l Union of Operating Engineers, Local Union 150, AFL-CIO*, 335 F.3d 643, 647 (7th Cir. 2003).

II. Factual Background

At all times relevant to the complaint, Mr. Blue was housed in Wabash Valley's Secure Confinement Unit (SCU) and Mr. Bedwell was the Food Service Director at Wabash Valley. Dkt. 11. The contract between the Indiana Department of Correction (IDOC) and Mr. Bedwell's employer, Aramark Food Services (Aramark), requires Aramark to serve a particular menu with specific portions to provide approximately 2500-2800 calories to inmates daily. Bedwell Declaration, dkt. 59-1 at ¶ 7; IDOC Foodservices Policy, dkt. 46-1 at 8-9. As the Food Service Director, Mr. Bedwell is responsible for ensuring compliance with the contract. Dkt. 59-1 at ¶ 7. He does this by mandating that food service workers use standardized utensils to provide uniform portion sizes on each tray. *Id.* at ¶ 8. He also spot-checks food preparation to ensure it is prepared safely and as directed by the contract. *Id.* at ¶ 6. The IDOC also conducts quarterly inspections to ensure contract compliance. *Id.* at ¶ 10. Food service workers are trained in the safe preparation and proper portioning of food. *Id.* at ¶ 12.

Inmates housed in the SCU, like Mr. Blue, are served food trays by correctional staff after being prepared by food service workers. *Id.* at ¶¶ 13, 14. The trays are not labeled for specific inmates; but are passed out randomly. *Id.* at ¶ 15.

The IDOC maintains a policy that inmates who have received an inadequate or unclean food tray can request a replacement tray from the correctional officer who delivered it. If the officer agrees that the tray is insufficient, the officer logs the issue and provides the inmate with a new tray. *Id.* at ¶¶ 16, 17. One correctional officer attests that he had to replace trays for Mr. Blue

because the trays were dirty or the portions were too small. Dkt. 46-1 at 25. Another officer attests that officers "constantly have no choice but to serve trays w[ith] short portions."¹ *Id.* at 28.

On June 30, 2021, Mr. Blue submitted a request for interview to Mr. Bedwell, stating that he regularly received insufficient food portions, correctional officers refused to give him replacement trays because they said all the trays had small portions, and Mr. Bedwell had been made aware of the issue previously but had done nothing to resolve it. Dkt. 46-1 at 34. When Mr. Blue grieved the issue in early July 2021, Mr. Bedwell responded that, if Mr. Blue continues to experience trays with small food portions, Mr. Blue should contact a Sergeant or ask the correctional officer to take a photo of the tray so Mr. Bedwell could ensure that it did not happen again. Dkt. 46-1 at 50. On September 22, 2021, Mr. Blue again wrote to Mr. Bedwell to report that he was still receiving small portions on his meal trays. *Id.* at 36.

On March 16, 2021, Mr. Blue's medical records show that he was 6' 2" tall and weighed 205 pounds. Dkt. 46-1 at 29. This put his body-mass index (BMI) at 26.32. *Id.* By the end of 2021, his weight had dropped to 182.5 pounds, with a BMI of 24.82. *Id.* at 30. Mr. Blue contends that he lost weight because the food trays he was being served provided insufficient calories. Blue Verified Motion for Summary Judgment, dkt. 46 at 2.

III. Discussion

Mr. Blue was a convicted prisoner at all relevant times. This means that the Eighth Amendment applies to his claim. *Estate of Clark v. Walker*, 865 F.3d 544, 546, n.1 (7th Cir. 2017). ("the Eighth Amendment applies to convicted prisoners"). The Eighth Amendment forbids "cruel and unusual punishment." U.S. Const. amend. VIII. "By prohibiting cruel and unusual punishment,

¹ Mr. Blue produced three affidavits regarding other problems with his food trays including finding a bug on a tray and a tray not being properly cleaned, but the Court dismissed these claims at screening because the allegations showed at most negligence. Dkt. 13 at 2.

the Eighth Amendment imposes duties on prison officials to 'provide humane conditions of confinement' and 'ensure that inmates receive adequate food, clothing, shelter, and medical care.'" *Thomas v. Blackard*, 2 F.4th 716, 719 (7th Cir. 2021) (quoting *Farmer v. Brennan*, 511 U.S. 825, 832 (1994)); *See Prude v. Clarke*, 675 F.3d 732, 734 (7th Cir. 2012) ("Deliberate withholding of nutritious food or substitution of tainted or otherwise sickening food, with the effect of causing substantial weight loss, vomiting, stomach pains, ... or other severe hardship, would violate the Eighth Amendment.").

The record, viewed in the light most favorable to Mr. Blue, shows that he lost 11% of his body weight (from 205 pounds to 182.5 pounds) in approximately 9 months. At his height, his initial weight put him in the overweight category according to BMI charts. But the defendant's reference to Mr. Blue being "technically" overweight indicates that this BMI categorization should be taken with a grain of salt. Mr. Blue's final weight of 182.5 pounds falls in the normal BMI range.

In *Prude*, the Seventh Circuit reversed the district court's grant of summary judgment, in part, because the plaintiff had lost 8% of his body weight while on a nutriloaf diet. 675 F.3d at 734-35. Although that plaintiff had not been overweight to begin with, the case confirms that a loss of 11% of one's body weight is significant. In addition, the record reflects that Mr. Blue repeatedly notified Mr. Bedwell about the problem and that Mr. Bedwell was the person responsible for ensuring that food portions were consistent and adequate. Although at least one correctional officer attests that he provided Mr. Blue with replacement trays when needed, another indicates that the IDOC tray replacement policy was useless to rectify the issue of small portion sizes because all the trays had inadequate portions. Dkt. 46-1 at 28 (affidavit stating that officers "constantly have no choice but to serve trays w[ith] short portions.").

A reasonable jury considering this record could conclude that the defendant was deliberately indifferent to Mr. Blue's consistent lack of adequate calories and substantial weight loss. Mr. Bedwell is therefore not entitled to summary judgment and his motion must be **denied**.

On the other hand, the record in the light most favorable to Mr. Bedwell reveals that he ensured that kitchen staff were trained in the delivery of consistent, adequate food portions and were required to use standardized utensils to ensure that each tray had the correct amount of food. Some officers abided by the tray replacement policy and provided a different tray when Mr. Blue asked. Moreover, even after his weight loss, his weight was in the BMI healthy range. In this light, a reasonable jury could conclude that Mr. Bedwell was not deliberately indifferent to Mr. Blue's nutritional needs. Thus, Mr. Blue's motion for summary judgment must also be **denied**.

IV. Conclusion

The parties' motions for summary judgment, dkt. [46] and dkt. [58] are **DENIED**.

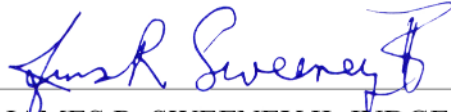
This matter is set for trial on May 28, 2024. A final pretrial conference is set for May 9, 2024. Dkt. 70. The Court will separately issue a final pretrial scheduling order.

Because it is the Court's preference that the plaintiff be represented by counsel for trial or any potential settlement conference, the Court will attempt to recruit counsel to represent the plaintiff. The plaintiff shall have **through September 13, 2023**, in which to file a motion for recruitment of counsel or object to the recruitment of counsel on his behalf. **The clerk is directed** to include the motion for counsel form with the plaintiff's copy of this Order.

After counsel is appointed for the plaintiff, the Magistrate Judge is requested to set a settlement conference at least one month before the final pretrial conference.

IT IS SO ORDERED.

Date: 08/18/2023



JAMES R. SWEENEY II, JUDGE
United States District Court
Southern District of Indiana

Distribution:

JEREMY BLUE
245250
WABASH VALLEY - CF
WABASH VALLEY CORRECTIONAL FACILITY - Inmate Mail/Parcels
6908 S. Old US Hwy 41
P.O. Box 1111
CARLISLE, IN 47838

Christopher Douglas Cody
HUME SMITH GEDDES GREEN & SIMMONS
ccody@humesmith.com

Georgianna Q. Tutwiler
HUME SMITH GEDDES GREEN & SIMMONS
gquinn@humesmith.com

Magistrate Judge M. Kendra Klump